

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 252 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

YUSUF N NANDOLIA

Versus

UNION OF INDIA

Appearance:

MR KG VAKHARIA for Petitioner

MR J.D.Ajmera Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 12/07/96

ORAL JUDGEMENT

Yusuf N. Nandolia of Patan District Mehsanahas
filed the present petition under article 226 of the
Constitution of India. The petitioner Yusuf N. Nandolia
is a resident of Patan district Mehsana and he was having

a telephone bearing No. 3399. Present petitioner had also earlier filed SCA No. 3778/84 as telephone connection bearing No. 2491 was disconnected without hearing him and his another telephone no. 3399 was not at all working. During the pendency of the said writ petition, the respondent no.1 had presented a bill mentioning therein that present petitioner was owing Rs. 527/- towards the telephone charges and he was also to pay reconnection charges and on payment of said amount, respondent no.1 will reconnect the telephone. Said petition was disposed of by His Lordship Shri S.B.Majmudar-J(as then he was) on 9.11.84. In the said judgment, the relevant portion is running as under:

" Mr. Vakharia for the petitioner states that probably, by now the outstanding bill amount so far as this connection is concerned must have been paid and that the petitioner's grievance is about reconnection charges only. If that is so, there is no reason why said telephone should not be reconnected. However, by way of abundant caution, it is directed that the petitioner shall pay up the outstanding bill amount for telephone no. 2491, if not already paid by now. The said payment be effected exclusive of reconnection charges within one week and on making such payment or on the petitioner satisfying the concerned respondents that such payment is already made, the respondents, especially respondents Nos. 3 and 4 shall reconnect the telephone No.2491 in its original position within two days thereafter."

With the above observations said petition has been disposed of. Thereafter on 1.12.84 a bill was presented to the present petitioner towards payment for reconnection of the said telephone no.2491. In the said bill there is also a clear reference of SCA No. 3778/84. Said bill is for 1024.50. Said amount of Rs.1024.50 includes principal amount of Rs. 527.50 p. the amount towards rental charges. The petitioner has come with a case and grievance that he is not liable to pay rental charges of Rs. 497/- claimed in the said bill. He, therefore, seeks an order or direction of this court to the effect that the claim of rental charges of Rs.497/- made against him is illegal and to get reconnection of the said telephone no. 2491 on mere payment of Rs.527.50 p.

2. The petitioner had also sought an interim relief by an order dated 8.2.85. Ad-interim relief in the following terms was passed on 18.2.85 as under:

" Rule returnable on 4.3.85. Ad interim relief in terms of para 10(B) in the petition paying Rs. 774.50 p. to the respondent. Notice as to interim relief returnable in February 26, 1985.

Mr. S.D. Shah waives service of the rule and notice."

Mr. Vekharria for the petitioner vehemently urged before me that the petitioner is not liable to pay rental charges because, his telephone was disconnected and the petitioner was not in a position to make use of telephone. The petitioner does not dispute his liability of paying the amount of Rs. 527.50 towards the charges for the use of the telephone. Said amount was due from him from the month of May 1984. The telephone unit was lying with the petitioner and the petitioner had not paid his dues towards use of the telephone till the date his telephone was disconnected. The earlier disconnection was made by the respondent without hearing the present petitioner and therefore, this court had found that he should be given reconnection without charging the amount towards the reconnection. The order does not say that the petitioner was not liable to pay rental charges. The order also clearly mentions that he was to get the reconnection without charging reconnection charges, on making payment within one week. But the petitioner had not made any payment till the bill was presented on 1.12.84 and even interim order is passed on condition of his making payment of Rs. 527.50. Merely because on earlier occasion the action of disconnection was done without hearing him the plea that the petitioner is not liable to pay rental charges cannot be accepted. Rental charges are to be charged against him from May 1984 i.e. from the date the bill was presented to him. But as a matter of fact rental charges are claimed from 1.7.84. On the petitioner paying the amount of his dues which were towards the rental charges of the said telephone particularly after the presentation of the said bill then one could have taken into consideration his contention that the telephone was improperly disconnected and that he was not in a position to make use of his telephone even though he had cleared all his arrears and

consequently one should not be charged with rental charges. But that is not the case in the present case. The petitioner was in arrears. The telephone unit was lying with him. Similarly in the earlier order it is also not held that he was not liable to pay rental charges. Therefore, in the circumstances, the claim of rental charges could not be said to be illegal and improper in view of the conduct of the petitioner in not making payment of the bill towards the use of his telephone and the fact that the telephone unit was lying in the custody of the petitioner, I am unable to hold that the discretionary powers under Article 226 should be used in favour of the petitioner and to hold that the claim of rental charges is illegal and improper. However, in view of the circumstances of the case I would grant the petitioner two months time from the date of this order to pay the rental charges. Rule discharged. No order as to costs.

(S.D.Pandit.J)